[Dated March 19, 1993]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
NO. 86-1840

JIMMY WAYNE JEFFERS,	)	
	)	
PETITIONER-APPELLANT,	)	ON APPEAL FROM THE
	)	UNITED STATES DISTRICT
-VS-	)	COURT FOR THE DISTRICT
	)	OF ARIZONA
SAMUEL A. LEWIS, ET AL.,	)	NO. CIV-85-945-TUC-ACM
	)	
RESPONDENTS-APPELLEES.	)	REQUEST FOR RULING
	)	

Respondents-Appellees hereby request that this Court rule on its petition for rehearing with suggestion for rehearing en banc.

DATED this 19th day of March, 1993.

Respectfully submitted,

GRANT WOODS
Attorney General

/S/

PAUL J. McMURDIE
Chief Counsel

Attorneys for RESPONDENTS-APPELLEES

MEMORANDUM OF POINTS AND AUTHORITIES

Petitioner-appellant, a death row inmate in the Arizona State Prison, filed a petition for writ of habeas corpus in the United States District Court in December ***1983***. (CR 1.) On February 4, 1986, the district court dismissed the petition. *Jeffers v. Ricketts*, 627 F. Supp. 1334 (D. Ariz. 1986). In his opening brief in this Court, Petitioner raised five claims that his convictions were improper, and eight claims that his death sentence was improperly imposed. On November 9, ***1987***, a three-member panel of this Court rejected all of Petitioner's attacks on his conviction. *Jeffers v. Ricketts*, 832 F.2d 476, 479-81 (9th Cir. 1987). The panel also rejected Petitioner's claim that he was denied an impartial sentencing tribunal. *Id.* at 481-82. Two members of the panel, however, vacated Petitioner's death sentence on the ground that the "especially heinous or depraved" aggravating circumstance, while sufficiently narrow, could not be constitutionally applied to Petitioner "without losing its ability to distinguish in a principled manner between those it condemns to death and those it does not." *Id.* at 482-86. The panel declined to consider Petitioner's remaining sentencing-related claims, although in a footnote it stated that he was not entitled to a jury determination of aggravating and mitigating factors. *Id.* at 486 n.11. On April 14, 1989, this Court denied the State's motion for rehearing and suggestion for rehearing en banc.

The State then filed a petition for writ of certiorari asking the United States Supreme Court to review this Court's decision that the "especially heinous or depraved" aggravating circumstance could not be constitutionally applied to Petitioner. On October 10, ***1989***, the Supreme Court granted the petition. On June 27, ***1990***, the Supreme Court concluded that the state supreme court had adopted a sufficiently narrow

construction of the "especially heinous or depraved" circumstance, and that the circumstance was constitutionally applied in Petitioner's case. *Lewis v. Jeffers*, __ U.S. __, 110 S. Ct. 3092, 111 L. Ed. 2d 606 (1990). The Supreme Court vacated this Court's judgment and remanded for proceedings consistent with its opinion. *Id.* On October 1, ***1990***, the original panel of this Court invited supplemental briefs on the sentencing-related claims Petitioner had previously raised that had not been resolved. On January 28, ***1991***, the State submitted its supplemental answering brief. On July 24, ***1991***, this Court heard oral argument on the remaining claims.

On August 31, 1992, after the State had filed a writ of mandamus against the panel, the panel finally issued its opinion. *Jeffers v. Lewis*, ___ F.2d ___ (9th Cir. 1992). On September 14, 1992, Respondents-Appellees filed pursuant to Rules 35 and 40 of the Federal Rules of Appellate Procedure, a petition for rehearing with suggestion for rehearing en banc. The panel, only after being prodded by the filing of a request for ruling, ordered the inmate to file a response on November 25, 1992. On December 15, 1992, the inmate filed his response to the petition for rehearing/suggestion for rehearing en banc. It has now been over 90 days since the response was filed.

The United States Supreme Court in *In re Blodgette*, specifically stated that it was the duty upon the federal courts to "take all steps necessary to insure a prompt resolution" of a federal habeas corpus petition in a capital case. 112 S. Ct. 674, 676, 116 L. Ed. 2d 669, 671 (1992). The State of Arizona believes that 90 days is more than sufficient for this Court to review and rule on the petition for rehearing. The State of Arizona respectfully requests that this Court rule on the petition for rehearing with

suggestion for rehearing en banc.

DATED this 19th day of March, 1993.

Respectfully submitted,

GRANT WOODS
Attorney General

/S/

PAUL J. McMURDIE
Chief Counsel

Attorneys for RESPONDENTS-APPELLEES

CERTIFICATE OF SERVICE

TWO COPIES of this Request were deposited for mailing March 19, 1993, to:

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